

AMENDED IN SENATE APRIL 24, 2000

SENATE BILL

No. 1501

Introduced by Senator Perata

February 15, 2000

An act to *amend Sections 1789.30, 1789.31, 1789.35, and 1789.37 of, to repeal Section 1789.33 of, and to add Title 1.6G (commencing with Section 1789.50) to Part 4 of Division 3 of the Civil Code, relating to deferred deposit loans.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1501, as amended, Perata. Deferred deposit loans.

~~Existing law governs the services provided by check cashers, including a requirement for registration with the Department of Justice. Existing law provides that a check casher may defer the deposit of a personal check, in an amount not to exceed \$300, for up to 30 days, pursuant to a written agreement that is required to include, among other items, the total amount of fees charged for the deferred deposit.~~

~~This bill would enact provisions to be known as the Deferred Deposit Loan Act and would define the purpose thereof.~~

Existing law governs the services provided by check cashers, including deferred deposit transaction services, as defined. Existing law also authorizes the Attorney General to bring a civil action for a violation of these provisions. A person who has been injured by a violation of these provisions may bring an action to recover damages and a court may award

punitive damages if the court determines by clear and convincing evidence that the breach or violation was willful.

This bill would authorize a city attorney or the district attorney, in addition to the Attorney General, to bring a civil action for a violation of these provisions.

The bill would also remove references to direct deposit transactions contained in the above provisions and instead enact the Deferred Deposit Loan Act. The Deferred Deposit Loan Act would prohibit any person from engaging in or offering to engage in the business of making deferred deposit loans, as defined, without first obtaining a license from the Department of Justice. The act would, among other things, establish requirements for obtaining that license, including the requirement that the applicant secure a \$25,000 surety bond. The act would require a licensee to file a prescribed annual report regarding transactions governed by the act, which the Department of Justice would analyze and forward to the Legislature. The act would also require the Department of Justice to maintain a toll-free telephone number that consumers may call with complaints, and would require the Department of Justice to develop notices and information that a licensee would be required to provide to consumers. The act would require that these notices and the deferred deposit loan agreement be written in languages other than English in certain instances. The act would impose limits on the fees, interest rate, number, and amount of deferred deposit loan transactions that a licensee may transact with a consumer. The act would provide that if the consumer enters into a consecutive transaction, as defined, the consumer may elect to participate in an optional repayment plan, as specified. The act would specify activities that a licensee is prohibited from pursuing in connection with a deferred deposit transaction, including threatening to use criminal process to collect on a deferred deposit check and attempting to collect damages pursuant to a civil action for a dishonored check. The act would also provide for civil remedies and impose criminal penalties for a violation of its provisions. By creating new crimes, the bill would impose a state-mandated local program.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Title 1.6G (commencing with Section~~
2 ~~SECTION 1. Section 1789.30 of the Civil Code is~~
3 ~~amended to read:~~
4 1789.30. Every check casher, as applicable to the
5 services provided, shall post a complete, detailed, and
6 unambiguous schedule of all fees for (a) cashing checks,
7 drafts, money orders, or other commercial paper serving
8 the same purpose ~~and making any deferred deposit~~
9 ~~thereof~~, (b) the sale or issuance of money orders, and (c)
10 the initial issuance of any identification card. Each check
11 casher shall also post a list of valid identification which is
12 acceptable in lieu of identification provided by the check
13 casher. The information required by this section shall be
14 clear, legible, and in letters not less than one-half inch in
15 height. The information shall be posted in a conspicuous
16 location in the unobstructed view of the public within the
17 check casher's premises.
18 ~~SEC. 2. Section 1789.31 of the Civil Code is amended~~
19 ~~to read:~~
20 1789.31. ~~(a)~~As used in this title, a "check casher"
21 means a person or entity that for compensation engages,
22 in whole or in part, in the business of cashing checks,
23 warrants, drafts, money orders, or other commercial
24 paper serving the same purpose. "Check casher" does not
25 include a state or federally chartered bank, savings
26 association, credit union, or industrial loan company.
27 "Check casher" also does not include a retail seller
28 engaged primarily in the business of selling consumer
29 goods, including consumables, to retail buyers that cashes

1 checks or issues money orders for a minimum flat fee not
2 exceeding two dollars (\$2) as a service to its customers
3 that is incidental to its main purpose or business.

4 ~~(b) As used in this title, “deferred deposit” means a~~
5 ~~transaction whereby the check casher refrains from~~
6 ~~depositing a personal check written by a customer until~~
7 ~~a specific date, pursuant to a written agreement, as~~
8 ~~provided in Section 1789.33.~~

9 *SEC. 3. Section 1789.33 of the Civil Code is repealed.*

10 ~~1789.33. (a) A check casher may defer the deposit of~~
11 ~~a personal check written by a customer for up to 30 days,~~
12 ~~pursuant to the provisions of this section. The face~~
13 ~~amount of the check shall not exceed three hundred~~
14 ~~dollars (\$300). Each deferred deposit shall be made~~
15 ~~pursuant to a written agreement that has been signed by~~
16 ~~the customer and by the check casher or an authorized~~
17 ~~representative of the check casher. The written~~
18 ~~agreement shall contain a statement of the total amount~~
19 ~~of any fees charged for the deferred deposit, expressed~~
20 ~~both in United States currency and as an annual~~
21 ~~percentage rate (APR). The written agreement shall~~
22 ~~authorize the check casher to defer deposit of the~~
23 ~~personal check until a specific date not later than 30 days~~
24 ~~from the date the written agreement was signed and~~
25 ~~executed. The written agreement shall not permit the~~
26 ~~check casher to accept collateral.~~

27 ~~(b) A customer who enters into a deferred deposit~~
28 ~~agreement and offers a personal check to a check casher~~
29 ~~pursuant to that agreement shall not be subject to any~~
30 ~~criminal penalty for the failure to comply with the terms~~
31 ~~of that agreement.~~

32 *SEC. 4. Section 1789.35 of the Civil Code is amended*
33 *to read:*

34 1789.35. (a) A check casher shall not charge a fee for
35 cashing a payroll check or government check in excess of
36 3 percent if identification is provided by the customer, or
37 ~~3.5~~ 3½ percent without the provision of identification, of
38 the face amount of the check, or three dollars (\$3),
39 whichever is greater. Identification, for purposes of this
40 section, is limited to a California driver’s license, a

1 California identification card, or a valid United States
2 military identification card.

3 (b) A check casher may charge a fee of no more than
4 ten dollars (\$10) to set up an initial account and issue an
5 optional identification card for providing check cashing
6 services. A replacement optional identification card may
7 be issued at a cost not to exceed five dollars (\$5).

8 (c) A check casher shall provide a receipt to the
9 customer for each transaction.

10 ~~(d) Subject to the limitations of Section 1789.33, a~~
11 ~~check casher may charge a fee for cashing a personal~~
12 ~~check, as posted pursuant to Section 1789.30, for~~
13 ~~immediate deposit in an amount not to exceed 12 percent~~
14 ~~of the face value of the check, or for deferred deposit in~~
15 ~~an amount not to exceed 15 percent of the face value of~~
16 ~~the check.~~

17 ~~(e) A check casher shall not enter into an agreement~~
18 ~~for a deferred deposit with a customer during the period~~
19 ~~of time that an earlier written agreement for a deferred~~
20 ~~deposit for the same customer is in effect.~~

21 ~~(f) A check casher who enters into a deferred deposit~~
22 ~~agreement and accepts a check passed on insufficient~~
23 ~~funds, or any assignee of that check casher, shall not be~~
24 ~~entitled to recover damages in any action brought~~
25 ~~pursuant to, or governed by, Section 1719.~~

26 ~~(g) For a transaction pursuant to Section 1789.33, a fee~~
27 ~~not to exceed fifteen dollars (\$15) may be charged for the~~
28 ~~return of a dishonored check by a depository institution.~~
29 ~~The fee may be collected by a check casher who holds a~~
30 ~~valid permit issued pursuant to Section 1789.37, when~~
31 ~~acting under the authority of that permit.~~

32 ~~(h) No amount in excess of the amounts authorized by~~
33 ~~this section shall be directly or indirectly charged by a~~
34 ~~check casher pursuant to a deferred deposit agreement.~~

35 ~~(i) Any person who violates any provision of this~~
36 ~~section shall be liable for a civil penalty not to exceed two~~
37 ~~thousand dollars (\$2,000) for each violation, which shall~~
38 ~~be assessed and recovered in a civil action brought in the~~
39 ~~name of the people of the State of California by the~~
40 ~~Attorney General, a city attorney, or a district attorney~~

1 in any court of competent jurisdiction. Any action
2 brought pursuant to this subdivision shall be commenced
3 within four years of the date on which the act or
4 transaction upon which the action is based occurred.

5 ~~(j)~~

6 (f) A willful violation of this section is a misdemeanor.

7 ~~(k)~~

8 (g) Any person who is injured by any violation of this
9 section may bring an action for the recovery of damages,
10 an equity proceeding to restrain and enjoin those
11 violations, or both. The amount awarded may be up to
12 three times the damages actually incurred, but in no
13 event less than the amount paid by the aggrieved
14 consumer to a person subject to this section. If the
15 plaintiff prevails, the plaintiff shall be awarded
16 reasonable attorney's fees and costs. If a court determines
17 by clear and convincing evidence that a breach or
18 violation was willful, the court, in its discretion, may
19 award punitive damages in addition to the amounts set
20 forth above.

21 *SEC. 5. Section 1789.37 of the Civil Code is amended*
22 *to read:*

23 1789.37. (a) Every owner of a check casher's business
24 shall obtain a permit from the Department of Justice to
25 conduct a check casher's business.

26 (b) All applications for a permit to conduct a check
27 casher's business shall be filed with the department in
28 writing, signed by the applicant if an individual or by a
29 member or officer authorized to sign if the applicant is a
30 corporation or other entity, and shall state the name of
31 the business, the type of business engaged in, ~~whether the~~
32 ~~applicant intends to enter into deferred deposit~~
33 ~~agreements~~, and the business address. Each applicant
34 shall be fingerprinted.

35 (c) Each applicant for a permit to conduct a check
36 casher's business shall pay a fee not to exceed the cost of
37 processing the application, fingerprinting the applicant,
38 and checking or obtaining the criminal record of the
39 applicant, at the time of filing the application.

(d) Each applicant shall annually, beginning one year from the date of issuance of a check casher's permit, file an application for renewal of the permit with the department, along with payment of a renewal fee not to exceed the cost of processing the application for renewal and checking or obtaining the criminal record of the applicant.

(e) The department shall deny an application for a permit to conduct a check casher's business, or for renewal of a permit, if the applicant has a felony conviction involving dishonesty, fraud, or deceit, provided the crime is substantially related to the qualifications, functions, or duties of a person engaged in the business of check cashing.

(f) The department shall adopt regulations to implement this section, and shall determine the amount of the application fees required by this section. The department shall prescribe forms for the applications and permit required by this section, which shall be uniform throughout the state.

(g) In any action brought by a city attorney or district attorney to enforce a violation of this section, any owner of a check casher's business who engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is subject to a civil penalty, as follows:

(1) For the first offense, not more than one thousand dollars (\$1,000).

(2) For the second offense, not more than five thousand dollars (\$5,000).

(h) Any person who has twice been found in violation of subdivision (g) and who, within 10 years of the date of the first offense, engages in the business of check cashing without holding a current and valid permit issued by the department pursuant to this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five thousand dollars (\$5,000), or by both *that fine and imprisonment*.

(i) All civil penalties, forfeited bail, or fines received by any court pursuant to this section shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. Fines and forfeitures so deposited shall be disbursed pursuant to the Penal Code. Civil penalties so deposited shall be paid at least once a month as follows:

(1) Fifty percent to the Treasurer by warrant of the county auditor drawn upon the requisition of the clerk or judge of the court, to be deposited in the State Treasury on order of the Controller.

(2) Fifty percent to the city treasurer of the city, if the offense occurred in a city, otherwise to the treasurer of the county in which the prosecution is conducted.

Any money deposited in the State Treasury under this section which is determined by the Controller to have been erroneously deposited therein shall be refunded, subject to approval of the State Board of Control prior to the payment of the refund, out of any money in the State Treasury which is available by law for that purpose.

SEC. 6. Title 1.6G (commencing with Section 1789.50) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6G. DEFERRED DEPOSIT LOANS

CHAPTER 1. GENERAL PROVISIONS

1789.50. It is the intent of the Legislature in enacting this title to ensure that deferred deposit loans are regulated in a manner that will best protect the interests of the people of the State of California. It is further the intent of the Legislature to protect consumers from misrepresentations and unfair dealings and abuses in the marketplace with respect to deferred deposit loans and to ensure that consumers receive adequate disclosure of all relevant terms. This title shall be liberally construed to achieve these purposes.

1789.51. This title shall be known and may be cited as the Deferred Deposit Loan Act.

1 1789.52. For purposes of this title, the following
2 definitions apply:

3 (a) “Amount owed” means the sum of the finance
4 charge, and the deferred deposit loan amount.

5 (b) “Check” has the meaning provided in Section 3104
6 of the Commercial Code.

7 (c) “Consecutive transaction” means a deferred
8 deposit transaction initiated within 72 hours of
9 completion of a previous deferred deposit transaction.

10 (d) “Consumer” means any natural person who, singly
11 or jointly with another consumer, enters into a deferred
12 deposit loan.

13 (e) “Deferred deposit loan” means any arrangement
14 conducted by any means in which a person for a fee,
15 service charge, or other consideration, accepts a check
16 from a consumer and provides a consumer cash or its
17 equivalent and agrees not to offer the check for
18 presentment for a period of time. “Deferred deposit
19 loan” does not include any loan agreement which is
20 entered into with a bank, savings and loan association,
21 credit union, or other state or federally regulated
22 financial institution that does not utilize an agency
23 relationship with a facilitator, as defined in this section.

24 (f) “Deferred deposit loan amount” means the
25 amount of cash proceeds provided to a consumer
26 pursuant to a deferred deposit loan, exclusive of any
27 interest, or administrative or other loan-related charge.

28 (g) “Department” means the Department of Justice.

29 (h) “Employee” means an individual who works for an
30 employer, is listed on the employer’s payroll records, and
31 is under the employer’s direction and control.

32 (i) “Facilitator” means any person who facilitates,
33 enables, or acts as an agent for another person who makes
34 deferred deposit loans. A facilitator shall be licensed
35 pursuant to the provisions of Section 1789.60.

36 (j) “Finance charge” means any payment, charge, fee,
37 cost or expense, however denominated or expressed, that
38 a consumer contracts to pay for the privilege of obtaining
39 a deferred deposit loan. “Finance charge” does not

1 include the amounts, if any, for delinquency charges,
2 attorney's fees, court costs, or collection expenses.

3 (k) "Installment payment" means a partial payment
4 on a deferred deposit loan made pursuant to Section
5 1789.62.

6 (l) "Installment payment term" means a period of
7 time for the consumer to make an installment payment,
8 that is equal to the consumer's payroll period or 15 days,
9 whichever is greater. "Installment payment term" shall
10 in no event exceed 31 days.

11 (m) "Licensee" means any person licensed by the
12 Department of Justice under the provisions of this title to
13 engage in deferred deposit loans.

14 (n) "Pay day" means the regular day on which a
15 consumer receives a payment of earned wages, as
16 provided in Chapter 1 (commencing with Section 200) of
17 Part 1 of Division 2 of the Labor Code.

18 (o) "Pay period" means the regular period for which
19 a consumer receives a payment of earned wages, as
20 provided in Chapter 1 (commencing with Section 200) of
21 Part 1 of Division 2 of the Labor Code.

22 (p) "Person" means any natural person, firm,
23 partnership, association or corporation, or other entity
24 that makes a deferred deposit loan to a consumer in this
25 state or any facilitator as defined in this section.

26 (q) "Principal" means a controlling person of an entity
27 subject to this title, including, but not limited to any
28 officer, director, general partner, or person owning or
29 controlling, directly or indirectly, 10 percent or more of
30 the outstanding interests or equity securities of the
31 applicant for a license, or the entity.

32 (r) "Unpaid balance" means the difference between
33 the amount owed, and any and all installment payments
34 made pursuant to Section 1789.62.

35

36 CHAPTER 2. LICENSING

37

38 1789.60. (a) No person shall engage in or offer to
39 engage in the business regulated by this title without a
40 current license issued by the department. The following



1 shall be required by the department as a condition of
2 licensure and license renewal:

3 (1) That neither the applicant nor any principal of the
4 applicant has been convicted of or pleaded nolo
5 contendere to a crime.

6 (2) That the applicant has provided a sworn statement
7 that the applicant will not violate, or in the case of license
8 renewal has not violated, any applicable state law when
9 collecting payment or attempting to collect payment of
10 deferred deposit loans made in this or any other state.

11 (3) That the applicant pay a nonrefundable fee
12 established by the department, in an amount sufficient to
13 cover the costs of the background check and the
14 administration of the program, but not to exceed
15 _____.

16 (4) That the applicant secure a surety bond in the
17 amount of twenty-five thousand dollars (\$25,000),
18 payable to the department and issued by an insurer
19 authorized to do business in this state. A copy of the bond,
20 including any and all riders and endorsements executed
21 subsequent to the effective date of the bond, shall be filed
22 with the department pursuant to procedures which the
23 department shall establish, and shall be used for the
24 recovery of expenses, fines, and fees levied by the
25 department in accordance with this division or for
26 damages or penalties due to consumers as the result of a
27 licensee's violation of the requirements of this title.

28 (5) That the applicant pay the cost of an examination
29 at a fee of seventy-five dollars (\$75) per hour for each
30 examiner whenever the department determines that an
31 examination or audit of the licensee is warranted, plus the
32 travel expenses of any examiner required by the
33 examination or audit to travel out of state.

34 (6) That the applicant provide any other information
35 the department deems necessary to carry out this section.

36 (b) Each license shall be issued for a term of one year.
37 Licenses shall be renewed pursuant to the requirements
38 set forth in subdivision (a).

39 (c) Not more than one place of business shall be
40 maintained under the same license, but the department

1 may issue more than one license to the same licensee
2 upon compliance with all the provisions of this title
3 governing issuance of a single license.

4 (d) The department may revoke, suspend, or deny the
5 renewal of a license for any violation of this title according
6 to procedures that the department may establish. If the
7 department finds, after due notice and hearing, or
8 opportunity for hearing, that any licensee, or an officer,
9 agent, employee, or representative thereof, has violated
10 any of the provisions of this title or any other procedures
11 that the department may establish, or has failed to comply
12 with the regulations adopted by the department, or has
13 failed or refused to make its reports to the department,
14 or has furnished false information to the department, the
15 department may issue an order revoking or suspending
16 the right of the licensee and the officer, agent, employee
17 or representative to do business in this state as a licensee.
18 Nothing in this subdivision shall be construed to prohibit
19 the imposition of any additional administrative remedies
20 by the department or to preempt any civil or criminal
21 liability of the licensee.

22 (e) The department shall maintain a list of licensees
23 that shall be available to interested persons and the public
24 upon request.

25 (f) The department shall establish a complaint process
26 whereby a consumer or any member of the public may
27 file a complaint against a licensee or employee who
28 violates any provision of this title. The department shall
29 maintain a toll-free telephone number to receive calls
30 from consumers regarding complaints and concerns
31 related to this title.

32 (g) The department shall investigate complaints and
33 hold hearings as it deems appropriate. The department
34 may make findings of fact, conclusions of law, issue cease
35 and desist orders, citations, or administrative fines, refer
36 the matter to the appropriate law enforcement agency
37 for prosecution under this title, and suspend or revoke a
38 license granted under this title. The proceedings shall be
39 open to the public.

1 (h) The department shall develop a list of
2 representative examples of the dollar cost of loans and
3 payment terms to illustrate loan structures for
4 dissemination by licensees.

5 (i) The department shall develop a notice for
6 distribution to consumers by licensees which informs the
7 consumer about his or her rights and responsibilities
8 related to deferred deposit loans. The notice shall include,
9 but not be limited to, notice of the following:

10 (1) That the consumer is borrowing money that will be
11 repaid when the check is cashed.

12 (2) That the consumer may repay the loan at any time
13 before the check is cashed.

14 (3) Information about the payment structure for
15 deferred deposit loans.

16 (4) That if the consumer cannot repay the loan, or if
17 the consumer's checking account has insufficient funds to
18 pay the check, the consumer may be charged an
19 additional fee of up to fifteen dollars (\$15) or the actual
20 amount charged to the check casher by his or her
21 financial institution, whichever is less.

22 (5) That the consumer cannot be prosecuted in a
23 criminal action for passing a bad check or be threatened
24 with prosecution.

25 (6) That the lender may allow an extension of time for
26 repayment, but if the lender agrees to an extension, it
27 cannot charge any additional fee of any kind.

28 (7) Any additional information that the department
29 may deem necessary.

30 (j) On or before January 1, 2002, the department shall
31 forward a report to the Legislature, including the
32 information required pursuant to this section, as well as
33 an analysis of that information, including, but not limited
34 to, growth and trends in the industry, the impact on
35 consumers, whether consumers are taking loans
36 simultaneously from multiple licensees, and the
37 feasibility of tracking these loans.

38 (k) The department shall also make and file annually
39 as a public record a composite of the annual reports by

1 licensees and any comments on the reports that it deems
2 to be in the public interest.

3 (1) The department shall adopt regulations and
4 procedures as reasonably necessary to implement the
5 provisions of this title.

6
7 CHAPTER 3. DUTIES OF LICENSEE
8

9 1789.61. (a) Each licensee shall keep and use books,
10 accounts, and records that will enable the department to
11 determine if the licensee is complying with the provisions
12 of this title and shall maintain any other records as
13 required by the department. The department or a
14 designee of the department may examine those records
15 at any reasonable time. All records shall be kept for four
16 years following the last entry on a loan and according to
17 generally accepted accounting procedures, which means
18 that an examiner shall be able to review the
19 recordkeeping and reconcile each consumer loan with
20 documentation maintained in the consumer's loan file
21 records.

22 (b) Each licensee shall file an annual report with the
23 department pursuant to procedures which the
24 department shall establish. These reports shall include,
25 but not be limited to, the following information from the
26 previous calendar year:

27 (1) The total number of deferred deposit loans made.

28 (2) The total number of individual customers.

29 (3) The total number of consumers who chose the
30 optional payment plan provided for by Section 1789.62.

31 (4) The total number of deferred deposit loans
32 outstanding.

33 (5) The minimum, maximum, and average dollar
34 amount of deferred deposit loans.

35 (6) The average annual percentage rate, and the
36 average length, in days, of deferred deposit loans.

37 (7) The actual number of repeat consumers.

38 (8) The actual number of transactions entered into
39 with each customer during the calendar year.

1 (9) *The average annual income as disclosed by the*
2 *consumer pursuant to Section 1789.62.*

3 (10) *The total number and dollar amount of returned*
4 *checks, the total number and dollar amount of checks*
5 *recovered, and the total number and dollar amount of*
6 *checks charged off as of December 31 of the previous*
7 *year.*

8 (11) *A sworn statement that the licensee has not used*
9 *the criminal process or caused the criminal process to be*
10 *used in the collection of any deferred deposit loans or*
11 *used any civil process to collect the payment of deferred*
12 *payment loans not generally available to creditors to*
13 *collect on loans in default during the calendar year*
14 *ending as of December 31 of the previous year.*

15 (12) *Any additional information which the*
16 *department deems appropriate.*

17 (13) *The licensee shall attest in writing to the accuracy*
18 *of the information contained in the required annual*
19 *reports.*

20 (c) *In no case shall a licensee or an employee of the*
21 *licensee do any of the following:*

22 (1) *Engage in the business of deferred deposit lending*
23 *unless the department has first issued a valid license to the*
24 *licensee.*

25 (2) *Enter into more than one deferred deposit loan at*
26 *a time with the same consumer.*

27 (3) *Accept or use the same check for a subsequent*
28 *transaction, or permit a consumer to pay off all or a*
29 *portion of one deferred deposit loan with the proceeds of*
30 *another deferred deposit loan.*

31 (4) *Use any deceptive or unfair means to induce a*
32 *consumer to tender the entire amount owed for the*
33 *purpose of entering into another deferred deposit loan*
34 *agreement with that consumer as an alternative to*
35 *satisfying the obligation of a deferred deposit loan by*
36 *means of installment payments. If a consumer tenders*
37 *payment for the entire amount owed and on or about the*
38 *same day enters int another deferred deposit loan with*
39 *the same licensee, it shall be presumed that the licensee*

1 *has violated this subdivision. This presumption shall be a*
2 *rebuttable presumption affecting the burden of proof.*

3 *(5) Attempt to use the check provided by the*
4 *consumer in a deferred deposit transaction as security, or*
5 *accept any collateral for a deferred deposit loan.*

6 *(6) Sell any insurance of any kind whether or not sold*
7 *in connection with the making or collecting of a deferred*
8 *deposit loan.*

9 *(7) Enter into a deferred deposit transaction with a*
10 *minor.*

11 *(8) Threaten to use or use the criminal process to*
12 *collect a deferred deposit loan.*

13 *(9) Threaten to use or use any civil process to collect*
14 *a deferred payment loan if that process is not generally*
15 *available to creditors to collect on loans in default.*

16 *(10) Alter the date or any other information on the*
17 *check.*

18 *(11) Offer any benefit or incentive to a consumer in*
19 *return for the consumer referring other potential*
20 *borrowers to the licensee, including, but not limited to,*
21 *discounts, rebates, credits on any existing or subsequent*
22 *deferred deposit loan.*

23 *(12) Engage in any unfair, unlawful, or deceptive*
24 *conduct or make any untrue or misleading statement in*
25 *connection with the business of deferred deposit lending,*
26 *including any violation of this title.*

27 *(d) A licensee or an assignee of the licensee may not*
28 *commence an action pursuant to the provisions of Section*
29 *1719 on a check provided for a deferred deposit loan.*

30 *(e) A licensee shall at all times be legally responsible*
31 *for the good conduct in the business of his or her*
32 *employees or agents.*

33 *(f) According to procedures that the department shall*
34 *establish, the following information shall be included in*
35 *notices to be posted by a licensee in each location of the*
36 *licensee's business at which deferred deposit loans are*
37 *made:*

38 *(1) A statement disclosing that the licensee cannot use*
39 *the criminal process against a consumer to collect any*
40 *deferred deposit loan.*

(2) A schedule of interest and fees to be charged on representative loans, including the actual dollar amount charged and the corresponding annual percentage rate, based on information developed by the department.

(g) (1) The notice required by this section and the deferred deposit loan agreement required by Section 1789.62 shall be written in the same language as principally used in any oral discussions or negotiations leading to execution of the loan agreement.

(2) The notices required by paragraph (2) of subdivision (a) and by Section 1789.62 shall be in English, Spanish, and any other language in which a significant amount of deferred deposit loan business is conducted at that location.

CHAPTER 4. RIGHTS AND RESTRICTIONS FOR DEFERRED DEPOSIT LOANS

1789.62. (a) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a notice prepared by the department pursuant to Section 1789.60 regarding the consumer's rights, including the toll-free telephone number of the department for receiving calls regarding consumer complaints and concerns. The notice shall be signed and dated by the consumer, and a copy provided to the consumer. The original shall be kept on file by the licensee.

(b) Before entering into a deferred deposit loan with a consumer, the licensee shall require the consumer to provide proof of income, including annual income. No licensee shall enter into a deferred deposit loan the amount of which exceeds 25 percent of the consumer's earned wages for a pay period, or more than three hundred dollars (\$300), whichever is less.

(c) (1) Every agreement for a deferred deposit loan shall be contained in a single document which shall set forth all of the agreements of the licensee and the consumer with respect to the rights and obligations of each party.

1 (2) *The licensee shall provide the consumer, or each*
2 *consumer if there is more than one, with a copy of the*
3 *loan document.*

4 (3) *Every deferred deposit loan agreement shall be in*
5 *at least 10-point type. The deferred deposit loan*
6 *agreement shall clearly and conspicuously contain all of*
7 *the following:*

8 (A) *The name, address, and telephone number of the*
9 *licensee making the deferred deposit loan, and the name*
10 *of the individual employee who signs the agreement on*
11 *behalf of the licensee.*

12 (B) *An itemization of the fees and interest charges to*
13 *be paid by the consumer, including a representation of*
14 *the fees in terms of an annual percentage rate.*

15 (C) *Disclosures required by the federal*
16 *Truth-in-Lending Act (15 U.S.C. Sec. 1601 et seq.),*
17 *regardless of whether that act applies to the particular*
18 *deferred deposit loan.*

19 (D) *A clear description of the consumer's payment*
20 *obligations under the loan.*

21 (E) *In a manner that is more conspicuous than the*
22 *other information provided in the loan document and*
23 *that is in at least 14-point bold typeface, the following*
24 *statement: "You cannot be prosecuted or threatened with*
25 *prosecution in a criminal action to collect this loan." The*
26 *notice shall be located immediately above the space*
27 *reserved for the consumer's signature.*

28 (4) *Under no circumstances shall a deferred deposit*
29 *loan agreement include any of the following:*

30 (A) *A hold harmless clause.*

31 (B) *A confession of judgment clause.*

32 (C) *A waiver of the right to a jury trial, if applicable,*
33 *in any action brought by or against a consumer.*

34 (D) *A mandatory arbitration clause.*

35 (E) *Any assignment of or order for payment of wages*
36 *or other compensation for services.*

37 (F) *A provision in which the consumer agrees not to*
38 *assert any claim or defense arising out of the loan*
39 *agreement.*

1 (d) A deferred deposit loan transaction shall be
2 structured as follows:

3 (1) The maximum loan amount shall be 25 percent of
4 the consumer's earned wages for the consumer's pay
5 period or three hundred dollars (\$300), whichever is less.

6 (2) The finance charge on a deferred deposit loan may
7 not exceed 15 percent of the deferred deposit loan
8 amount.

9 (3) To obtain a deferred deposit loan, a consumer shall
10 provide to a licensee one check made payable to the
11 licensee in the amount equal to the sum of the deferred
12 deposit loan amount and the finance charge on that
13 deferred deposit loan. At the time a consumer and
14 licensee enter into a deferred deposit loan, the licensee
15 may not accept more than one check. The licensee may
16 not offer for presentment a check written by a consumer
17 to obtain a deferred deposit loan until the end of the
18 consumer's pay period, as defined in Section 1789.52. If a
19 consumer does not have a regular pay period, the pay
20 period shall be deemed to be at least 15 days.

21 (4) The deferred deposit loan agreement shall set
22 forth a schedule for repayment.

23 (5) If a consumer enters into a consecutive
24 transaction, the consumer may choose to participate in
25 optional repayment plan provided for in this section.

26 (A) The consumer shall repay the full amount owed in
27 four installment payments.

28 (B) The consumer shall tender to the licensee an
29 amount in cash equal to each of the first three installment
30 payments. At the time of payment of each of the first
31 three installment payments, the consumer shall provide
32 to the licensee another check made payable to the
33 licensee in the amount of the remaining unpaid balance.
34 In exchange for the consumer's new check, the licensee
35 shall return to the consumer the check previously being
36 held pursuant to the deferred deposit loan agreement.

37 (C) The first installment payment term shall
38 commence on the date upon which the licensee and a
39 consumer enter into a deferred deposit loan agreement.
40 The first installment payment shall be due and payable on

1 the final day of the first installment payment term, or on
2 the consumer's next regularly scheduled payday,
3 whichever is later. In no event shall an installment
4 payment term exceed 31 days. Each subsequent
5 installment payment term thereafter shall commence on
6 the day the prior installment payment became due and
7 payable. Each installment payment thereafter shall be
8 due and payable on the final day of that installment
9 payment term.

10 (D) To satisfy the obligation of the fourth installment
11 payment, the consumer may either:

12 (i) Inform a licensee to present for payment the
13 consumer's check being held pursuant to the deferred
14 deposit loan agreement.

15 (ii) Tender to the licensee an amount in cash equal to
16 the final installment payment in exchange for the
17 consumer's check being held pursuant to the deferred
18 deposit loan agreement.

19 (E) A consumer may pay an amount greater than the
20 minimum required for each installment payment at any
21 time on or before the due date of the installment
22 payment. Payment by a consumer prior to the due date
23 of an installment payment shall not alter the due date of
24 the next installment payment as provided for in this
25 subdivision.

26 (F) If a consumer fails to make a required installment
27 payment in a timely manner as provided for in this
28 section, the consumer shall be in default of the deferred
29 deposit loan agreement.

30 (G) After each payment is made, the licensee shall
31 give to the person making the payment a signed, dated
32 receipt showing the amount paid and the balance due on
33 the loan.

34 (e) A consumer subject to a deferred deposit loan
35 agreement may at any time satisfy the agreement by
36 either of the following:

37 (1) Authorizing a licensee to present the consumer's
38 check for payment on a date other than that set forth in
39 the agreement. The licensee shall record in the
40 consumer's loan file the date and time when the

1 consumer gave the authorization. The licensee shall not
2 offer a consumer's check for presentment without that
3 authorization from the consumer.

4 (2) Tendering to the licensee the entire amount owed
5 in cash in exchange for the consumer's check being held
6 pursuant to the deferred deposit loan agreement.

7 1789.63. Upon the receipt of the check from the
8 consumer for a deferred deposit loan, the licensee shall
9 immediately stamp the back of the check with an
10 endorsement that states: "This check is being negotiated
11 as part of a deferred deposit loan made pursuant to
12 Section 1789.62 of the Civil Code and is not subject to the
13 provisions of Section 1719 of the Civil Code."

14 1789.64. If there are insufficient funds to pay a check
15 on the date of presentment, a licensee may charge a fee,
16 not to exceed the lesser of fifteen dollars (\$15) or the fee
17 imposed upon the licensee by the financial institution.
18 The licensee shall not collect more than one such fee with
19 respect to a particular check even if the check has been
20 deposited more than once. A fee charged pursuant to this
21 subdivision is a licensee's exclusive charge for late
22 payment.

23
24 CHAPTER 5. REMEDIES
25

26 1789.67. (a) The remedies provided herein are
27 cumulative and apply to licensees and their employees.

28 (b) The violation of any provision of this title, or any
29 regulation adopted thereunder, except as the result of
30 accidental or bona fide error of computation, renders the
31 loan void, and the person shall have no right to collect,
32 receive, or retain any principal, interest, or other charges
33 whatsoever with respect to the loan.

34 (c) A consumer damaged by a violation of this title is
35 entitled to recover all of the following:

36 (1) Actual damages.

37 (2) Civil penalties of two thousand dollars (\$2,000) per
38 violation.

39 (3) The consumer's reasonable attorney's fees and
40 costs.

(4) If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(5) Equitable relief as the court deems proper.

(d) Any person, including any member, officer, or director of a licensee, who willfully violates any provision of this title is guilty of a misdemeanor.

(e) Any waiver or modification of the provisions of this title by the consumer shall be void and unenforceable as contrary to public policy.

(f) The rights, remedies, and penalties established by this title are cumulative to the rights, remedies, or penalties established under other laws.

(g) If any portion of this title or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the title that can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~1789.50) is added to Part 4 of Division 3 of the Civil Code, to read:~~

~~TITLE 1.6G. DEFERRED DEPOSIT LOANS~~

~~CHAPTER 1. GENERAL PROVISIONS~~

~~1789.50. This title shall be known and may be cited as the Deferred Deposit Loan Act.~~

1 ~~1789.51. (a) For purposes of this title, the following~~
2 ~~definitions apply:~~

3 ~~(1) Except as specified in subparagraphs (A) and (B),~~
4 ~~“deferred deposit loan” means any arrangement in which~~
5 ~~a person accepts a check and provides the drawer a~~
6 ~~portion of the face amount of the check in cash and agrees~~
7 ~~to hold the check pursuant to a written agreement for a~~
8 ~~period of days prior to deposit or presentment. “Deferred~~
9 ~~deposit loan” shall not be construed to apply to either of~~
10 ~~the following:~~

11 ~~(A) A retail seller engaged primarily in the business of~~
12 ~~selling consumer goods, including consumables, to retail~~
13 ~~buyers if that retail seller cashes checks or issues money~~
14 ~~orders for a minimum flat fee not exceeding two dollars~~
15 ~~(\$2) as a service to its customers that is incidental to its~~
16 ~~main purpose or business.~~

17 ~~(B) Deferred deposit loan agreements which are~~
18 ~~entered into with a bank, savings and loan association,~~
19 ~~credit union, or other similar state or federally regulated~~
20 ~~financial institution that does not utilize an agency~~
21 ~~relationship with a facilitator, as defined in paragraph (8).~~

22 ~~(2) “Deferred deposit loan amount” means the~~
23 ~~amount of cash proceeds provided to a consumer~~
24 ~~pursuant to a deferred deposit loan, exclusive of any~~
25 ~~interest, or administrative or other loan-related charges.~~

26 ~~(3) “Licensee” means any person licensed by the~~
27 ~~Department of Justice under the provisions of this title to~~
28 ~~engage in deferred deposit loans, or any facilitator as~~
29 ~~defined in paragraph (8). For purposes of this title, a~~
30 ~~licensee includes any bank, savings and loan association,~~
31 ~~credit union, or other state or federally regulated~~
32 ~~financial institution.~~

33 ~~(4) “Department” means the Department of Justice.~~

34 ~~(5) “Person” means any natural person, firm,~~
35 ~~partnership, association or corporation, or other entity~~
36 ~~that makes a deferred deposit loan to a consumer in this~~
37 ~~state or any facilitator as defined in this section.~~

38 ~~(6) “Consumer” means any natural person who, singly~~
39 ~~or jointly with another consumer, enters into a deferred~~
40 ~~deposit loan.~~

~~(7) “Check” as used in this title means a negotiable instrument as defined in Section 3104 of the Commercial Code which is drawn on a bank and is to be payable on demand at maturity of the deferred deposit loan.~~

~~(8) “Facilitator” means any person who facilitates, enables, or acts as an agent for another person who makes deferred deposit loans.~~

~~(9) “Principal” means a controlling person of an entity subject to this title, including, but not limited to any officer, director, general partner, or person owing or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant for a license, or the entity.~~

~~(10) “Affiliate” means any licensee or agent or facilitator of a licensee that is under common ownership or control of the licensee.~~

~~(11) “Finance charge” means any payment, charge, fee, cost or expense, however denominated or expressed, that a consumer contracts to pay for the privilege of obtaining a deferred deposit loan. “Finance charge” does not include the amounts, if any, for delinquency charges, attorney’s fees, court costs or collection expenses.~~

~~(12) “Amount owed” means the sum of the finance charge, and the deferred deposit loan amount.~~

~~(13) “Pay period” means the regular period for which a consumer receives a payment of earned wages, as provided in Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of the Labor Code.~~

~~(14) “Pay day” means the regular day on which a consumer receives a payment of earned wages, as provided in Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of the Labor Code.~~

~~(15) “Installment payment” means a partial payment on a deferred deposit loan.~~

~~(16) “Installment payment term” means a period of time for the consumer to make an installment payment, that is equal to the consumer’s payroll period or 15 days, whichever is greater. “Installment payment term” shall in no event exceed 31 days.~~

1 ~~(17) “Unpaid balance” means the difference between~~
2 ~~the amount owed, and any and all installment payments~~
3 ~~made.~~
4 ~~(b) All provisions of this title apply to any facilitator,~~
5 ~~as defined in this section.~~

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